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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 181 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANAHYALAL MATADIN GUPTA

Versus

STATE OF GUJARAT

Appearance:

MR HN JHALA for Petitioner No. 1

Mr.P.R.Abichandani, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 19/10/2002

ORAL JUDGEMENT

A complaint came to be filed by the Deputy Mamlatdar, Civil Supplies, Viramgam, against the present appellant under Section 3 of the Essential Commodities Act, 1985 read with Clause 8 of the Gujarat Essential Articles Dealers (Regulation) Order, 1977, alleging that the present appellant runs a flour mill at Viramgam. On 19th September, 1990, Mamlatdar visited the flour mill

and found 22 gunny bags full of wheat. The said gunny bags carried a mark of Food Corporation of India. It is the case of the complainant that the appellant was asked if he has bill for the purchase of wheat and he stated that he had none. Statement of the appellant was recorded wherein he is alleged to have admitted that the wheat are purchased by him from a fair-price shop. Differently put, the wheat are controlled wheat, and therefore, it is alleged that he has committed breach of Clause 8 of the Gujarat Essential Articles Dealers (Regulation) Order, 1977, ("Order of 1977" for short). Plea of the accused was recorded by the Special and Additional Sessions Judge, Ahmedabad Rural, and the appellant pleaded not guilty.

2. Considering the evidence lead by the prosecution, the Special Judge recorded conviction and sentenced the appellant to undergo R.I. for three months and to pay fine of Rs.1000/-, in default, to undergo further imprisonment for a period of one month. The said judgment was rendered on 7th February, 1992. Aggrieved by the said judgment and order, the present appeal is preferred by the accused-appellant.

3. Learned Advocate Mr.Y.B. Vaghela for the appellant submitted that the trial Court has not properly appreciated the evidence. The conviction is recorded on a premise that the accused has not proved or established his defence, which is against the cardinal principle of criminal jurisprudence. Mr. Vaghela also submitted that the provisions under which the accused-appellant was tried and convicted, namely, Clause 8 of the Order of 1977 provides for issuance of a memo or a bill by the dealer. The entire Order of 1977 in substance regulates the procedure required to be followed by a dealer of essential articles. Mr. Vaghela submitted that it is not the case of the prosecution that the appellant is a dealer, and therefore, he could not have been tried for breach of the said provision. Mr. Vaghela also submitted that even on merits, if the evidence is seen, the person from whom the controlled wheat could have been procured by the appellant is not arraigned as an accused. The evidence that is used against the appellant is that the gunny bags, in which wheat was stored, carried a mark of Food Corporation of India. Mr. Vaghela submitted that it has come on record that the gunny bags, in which wheat is supplied to the fair price shops are sold by the Managers of the fair-price shops in the open market. The case of the appellant is that he has purchased the gunny bags from open market and then stored wheat in them for his business of running a flour mill. This has not been

considered by the trial Court and the trial Court has proceeded on the premise that the accused has not produced bill to indicate wherefrom he purchased the wheat and that for running a flour factory such huge quantity of wheat is not required. Mr. Vaghela submitted that conviction, therefore, is wrongly recorded which may be set aside.

4. The appeal is opposed to by the learned A.P.P. Mr. Abichandani. He submitted that wheat is an essential article, and malpractices adopted by unscrupulous traders result in disturbance in the smooth supply of such articles in the society and therefore, such erring traders may be sternly dealt with; that there is no error committed by the trial Court and the appeal may be dismissed.

5. Having regard to the rival sides contentions, at the outset, an undisputed fact has to be recorded that the appellant-accused runs a flour mill. He does not run any fair price-shop.

6. Admittedly, when the complainant visited the premises of the appellant, he noticed twenty two gunny bags containing wheat, carrying mark of Food Corporation of India. It is not the case of the prosecution that it was meant for sale or that it was sold by the accused -appellant to anyone. With this factual background, if the provisions contained in Clause 8 of the Order of 1977 is seen, it provides as under:

"8. Issue of invoice or receipt.- No dealer shall sell any essential article without issuing a cash memo or a bill and no dealer shall issue a cash memo or a bill without keeping a duplicate copy of such memo or bill:

Provided that no such cash memo or bill shall be issued in respect of retail sale of an essential article costing not more than Rs.15/- unless demanded by the purchaser:

Provided further that a cash memo or a bill issued by a dealer shall indicate the name, address and the licence or authorization number, if any, of the purchaser.

7. It is amply clear from reading of the above clause that it requires a dealer to sell any essential article only by issuing a cash memo or a bill and to keep a duplicate of such cash memo or a bill unless the cost of the essential article is less than Rs.15/-. It also

provides that the cash memo or the bill issued by the dealer shall indicate name, address and the licence or authorization or licence number, if any, of the purchaser. Differently put, it imposes certain conditions on a dealer while selling an essential article. It does not impose any condition on a purchaser of essential article. The appellant has not been alleged to have sold the wheat. All that is found is that he was in possession of certain quantity of wheat and he could not produce bill of purchase. The said clause does not expect a purchaser of essential article to insist for a bill, retain or preserve it and to produce the same when asked for. By no stretch of imagination, therefore, can it be said that the accused-appellant committed breach of Clause 8 of the Order of 1977.

8. Assuming for a moment that Clause 8 is applicable to the facts of the case, then also, the evidence does not establish the case against the accused-appellant. The only evidence that the prosecution could bring on record is deposition of the complainant who visited the premises of the accused-appellant, and according to him, he found 22 gunny bags carrying mark of Food Corporation of India over it containing wheat. The appellant could not produce purchase bill thereof. His statement was recorded wherein it is alleged that he admitted that the wheat are controlled wheat. The statement is produced on record at Exh.14. On perusal of the statement before the Mamlatdar it is found to have been stated by the accused-appellant that he does not have any bill regarding purchase of wheat; he has purchased this wheat in the last three to four days. He says that the wheat are of ration. He says that he does not know the name of the person who sold the wheat to him but the person comes to him for a retail sale from whom he purchased. He does not know if such purchase is offence. Obvious, therefore, it is that he has purchased the wheat from a person whom he does not know. He could not have, therefore, said that it is ration wheat. The Mamlatdar has also not bothered to probe further into the matter and to go to the root by catching hold of a dealer, who may have unauthorizedly sold the wheat to the appellant. The deposition of the Raiding Officer in this regard at Exh.12 also makes an interesting reading. He says that he had interrogated the accused-appellant and he was told that the wheat was purchased by him from various fair-price shops of the rural area for which he did not have any bill. This is not to be found in the statement Exh.14. It is not stated therein that he had purchased the wheat from fair-price shop of the rural area. Assuming that what is deposed to by the witness

Hasmukhlal Doshi is correct, it was expected of him to have probed further into the matter and examine as to whether such dealers have unauthorizedly sold the wheat, and arraign them also as accused, which has not been done. The enquiry/investigation, therefore, is conducted in a very perfunctory manner. These aspects have been lost sight of by the trial Court. Apart from the fact that accused stated before the trial Court that the statement was forcibly recorded, above discussion would show that the statement given, as it is, does not carry the prosecution case any further, but draws it under a cloud of doubt. Non production of a bill by the accused, by itself, does not constitute the offence for which he was tried. No inference could be drawn that the stock is unauthorizedly purchased by him. It would also be not proper to proceed on a premise that because the gunny bags carried the mark of Food Corporation of India the offence is established because those bags are admittedly sold in open market once the foodgrain supplied to the fair-price shops and the bags become empty after sale of the contents.

9. The trial Court erred in recording conviction by observing that the defence is not probable or believable. The falsity of defence will come in the way only after the prosecution establishes the case against the accused, and as discussed above, the prosecution case cannot be considered as one which proves the guilt of the accused to the hilt. In fact, as discussed in the initial part of this judgment, Clause 8 of the Order of 1977 does not expect anything to be done by a purchaser, and it is not the case of the prosecution that the accused has sold the wheat in contravention of the provision of Clause 8 of the Order of 1977. The conviction, therefore, cannot be upheld. The appeal deserves to be allowed.

The appeal is allowed. Conviction recorded by the Special Judge, Ahmedabad Rural, by judgment and order dated 7th Febraury, 1992 in Special Case no.2/1991 is hereby set aside. The accused is acquitted of the charges levelled against him. His bail bond shall stand cancelled. Fine, if paid, shall be refunded to him.

(A.L.Dave,J.)

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